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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,465	02/25/2004	Lec Bolduc	9494.18514	9327

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EXAMINER

RYCKMAN, MELISSA K

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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07/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/786,465

Applicant(s)

BOLDUC ET AL.

Examiner

Melissa Ryckman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-44 is/are pending in the application.
- 4a) Of the above claim(s) 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-36 and 38-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's election without traverse of Species 6 (Figs. 16 A-16D) and subspecies 1 (without a tether) in the reply filed on 4/9/07 is acknowledged. Claims 32-36,38,39, and 44 are pending, claim 37 has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-36,38,39, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott et al. (U.S. Patent No. 5,334,196).

Claim 32:

Scott teaches a tool for applying an implantation force to a fastener sized and configured for implantation in tissue in response to an implantation force applied according to prescribed conditions, the tool comprising a tool body (12), a driven member carried by the tool body and being operable to apply the implantation force (35, Fig. 4), a mechanism on the driven member to couple the fastener to the driven member to transfer the implantation force from the driven member to the fastener (28, Fig. 2), a controller coupled to the driven member (36), the controller including an initial phase operating the driven member to apply the implantation force under conditions than are short of the prescribed conditions (with 36 is moved it applies the implantation force), a

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lull phase commencing at the end of the initial phase interrupting operation of the driven member (the lull phase is inherently the time period after the implantation), a final phase operating the driven member under conditions that supplement the conditions of the initial phase to achieve the prescribed conditions (Fig. 5), the controller requiring, after the initial phase, a prescribed command to advance from the lull phase to the final phase (the prescribed command is the trigger being activated, 36, Fig. 4).

Claims 33 and 34:

Scott teaches the prescribed command is based on input from an operator and upon input reflecting a sensed operating condition (inherently using 36 is input from an operator, the sensed operating condition is when the latch of 48 moves, col. 6, ll. 37,38).

Claim 35:

Scott teaches the driven member is also operable to apply a removal force to withdraw the fastener from tissue (Fig. 6, 24 applies force), and wherein the controller includes a removal phase operating the driven member to apply the removal force (Fig. 6), the controller requiring, after the initial phase, a different prescribed command to advance from the lull phase to the removal phase (moving 36, col. 4, ll. 62).

Claim 36:

Scott teaches the driven member is rotated in one direction to apply the implantation force (32 pivots, col. 4, ll. 62) and rotated in an opposite direction to apply the removal force (Figs. 4 and 6).

Claims 38 and 39:

Scott teaches the tool body includes a tube (8) that carries the driven member (32/36) and the driven member is rotated (rotates, 124, Fig. 5) to apply the implantation force.

Claim 44:

Scott teaches coupling a fastener to the driven member, accessing a tissue region, operating the driven member during the initial phase to partially implant the fastener in the tissue region (abstract line 2 and 3), deciding during the lull phase to commence the final phase, entering the prescribed command to advance from the lull phase to the final phase (col. 4, ll. 62), thereby completing the implantation of the fastener in the tissue region.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR



(JACKIE) TAN-UYEN HO
SUPERVISORY PATENT EXAMINER

7/20/07